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Message Text

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66613
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---------- 030007
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FM SECSTATE WASHDC
TO AMEMBASSY NAIROBI

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FOLLOWING REPEATS TOKYO 4423 ACTION DEPT INFO BONN LONDON
EC BRUSSELS GENEVA OECD PARIS USUN APRIL 4TH

QUOTE

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FOR L AND IO/CMD

E.O. 11652: N/A
TAGS: ECOSOC, UN, OCON
SUBJ: FOURTH MEETING COMMITTEE ON NATURAL RESOURCES - TOKYO,
MARCH 24-APRIL 4, PERM. SOV. NATURAL RESOURCES

REF: A. STATE 075390
B. TOKYO 4301

SUMMARY. U.S. DEL BELIEVES IT HAS ACHIEVED SUBSTANTIAL COM-
PLIANCE WITH INSTRUCTIONS REFTEL A BY FORCING A FAVORABLE
RULING FROM CHAIR ON ISSUE OF "CONSENSUS" IN CONTEXT OF
SERIES OF PROCEDURAL INTERVENTIONS BY USDEL UPON ADOPTION
OF RES. ITEM 4 AGENDA CONTAINING TWO UNACCEPTABLE REFERENCES
TO NIEO AND CERDS WHICH RULING IS APPLICABLE TO RES. ITEM 7
REPORTED REFTEL B. END SUMMARY.

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1. "GENTLEMEN'S AGREEMENT" ON VOTING IN CNR CONTAINED IN

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PARA 10 OF CNR DECISION ON "ORGANIZATION OF THE SESSION"
ADOPTED AT OPENING OF MEETING. PARA 10 IS TEXT OF "GENTLE-
MEN'S AGREEMENT" ADOPTED AT FIRST MEETING CNR AS FOLLOWS:
QUOTE THE COMMITTEE AGREES TO TAKE DECISIONS BY CONSENSUS.
IN THE EVENT CONSENSUS NOT POSSIBLE BUT A MAJORITY READILY
DISCERNIBLE, THE COMMITTEE WILL DECIDE THE MATTER ACCORDINGLY.
THE FACT THERE IS SOME DISAGREEMENT WITH THE DECISION WILL
BE RECORDED IN THE REPORT, TOGETHER WITH THE REASONS FOR
THE DISAGREEMENT. END QUOTE.

2. IN ACTION ON RES ITEM 4 USDEL (AMB FERGUSON) "OBJECTED
TO AND RESERVED" ON PARAS OF RES. "BEARING IN MIND RELEVANT
PROVISIONS OF THE DECLARATION AND PROGRAM OF ACTION FOR
THE ESTABLISHMENT OF INNER QUOTE THE END INNER QUOTE NEW
INTERNATIONAL ECONOMIC ORDER AND OF THE CHARTER OF ECONOMIC
RIGHOJ AND DUTIES OF STATES AND THE PRINCIPLE OF PERMANENT
SOVEREIGNTY OVER NATURAL RESOURCES END QUOTE AND PARA QUOTE
UNDERLINES THE IMPORTANCE OF PROMOTING CO-OPERATION AMONG
DEVELOPING COUNTRIES IN THE FIELD OF NATURAL RESOURCES WITH-
IN GHE FRAMEWORK OF INTERDEPENDENCE AS PROVIDED FOR BY THE
PROGRAM OF ACTION FOR THE ESTABLISHMENT OF THE NEW INTER-
NATIONAL ECONOMIC ORDER AND WITHOUT PREJUDICE TO OVER-ALL
COOPERATION. END QUOTE.

3. FYI. BY PRIOR AGREEMENT BETWEEN AMB FERGUSON AND UKDEL
(FRED HOHLER) ON FIRST MENTION OF "ADOPTION BY CONSENSUS"
UK WOULD REQUEST RULING OF CHAIR ON WHETHER CONSENSUS
EXISTED AND AMB FERGUSON WOULD CONSTRUE PARA 10 "GENTLEMEN'S
AGREEMENT" TO EFFECT THAT NO CONSENSUS COULD EXIST ON FACE
OF EITHER A RESERVATION OR OBJECTION. END FYI. DESPITE PRIOR
"ADVICE" BY AMB FERGUSON TO FRG DEL THAT IN STATING "OBJEC-
TIONS" ON UNACCEPTABLE PARAS ON NIEO AND CERDS IT NOT REFER
TO "ADOPTION BY CONSENSUS", FRG DEL NONETHELESS "RESERVED
ON ADOPTION BY CONSENSUS" OF RES. WHEREUPON UK REQUESTED
RULING BY CHAIR THAT RES NOT ADOPTED BXCONSENSUS. URUGUAY
THEN REQUESTED RULING THAT RES ADOPTED BY CONSENSUS. IRAQ
AND T AND T INTEFVENED IN SUPPORT OF URUGUAY REQUEST, T AND
T DEL ASSERTED THAT IN ABSENCE OF VOTING ANY ADOPTION WAS A
"CONSENSUS" IN TERMS OF PARA 10 "GENTLEMEN'S AGREEMENT."
FERGUSON INTERVENED TO ACCUSE T AND T DEL OF CIRCULAR REASON-
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ING AND MISCONTRUCTION OF PARA 10. HER POSITION WAS "EITHER
CONSENSUS OR REJCTION" WHILE FERGUSON ASSERTED THAT PARA 10
EXPRESSLY PROVIDED FOR ADOPTION "BY A MAJORITY READILY DIS-
CERIBLE" WHILE THOSE IN MINORITY "WERE IN DIS
GREEMENT" WITH
ADOPTION IN TERMS PARA 10. THEREFORE MINORITY BY EXPRESSING
DISAGREEMENT (I.E., U.S., U.K., FRG, ITALY, AUSTRIA) WERE
EXERCISING THE ALTERNATIVE TO A "NO" VOTE AND MUST BE RE-

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CORDED IN REPORT AS "OBJECTING TO ADOPTION BY A DISCERIBLE
MAJORITY." FEGUSON CONCLUDED BY REQUESTING RULING OF CHAIR
IN ACCORDANCW TIH FERGUSON'S CONSTRUCTION OF PARA JKPM

4. CHAIR RULED THAT RES NOT RPT NOT ADOPTED BY CONSENSUS
BUT WAS ADOPTED "BY A MAJORITY READILY DISCERNIBLE" AND
" OBJECTIONS TO ADOPTION WOULD BE REFLECTED IN THE REPORT."
USDEL HAS FOLLOWED UP WITH RAPPORTEUR (CANADA) TO ASSURE
CHAIR'S RULING IMPLEMENTED.

5. IRAQI DEL INFORMED AMB FERGUSON THAT IN LIGHT OF CHAIR'S
RULING HENCE FORTH G-77 WILL NOT BE "FLEXIBLE" (SIC) AND
WILL FORCE ADOPTION OF THEIR "UNALTERED RESOLUTIONS" SINCE
USG DESTROYED USEFUL DEVICE OF "CONSENSUS WITH RESERVATION".(5

6. IN LIGHT OF FOREGOING DEVELOPMENTS AMB FERGUSON, ON PERM
SOV RES INTENDS, (A) TO STATE USG POSITION IS THAT NO MEMBER
STATE CAN BE DENIED VOTE IN UN WHEN IT SO REQUESTS, HOWEVER,
(B) IN VIEW OF "GENTLEMEN'S AGREEMENT" ADOPTED AT TIME WE
WERE NOT MEMBER WE WILL NOT INSIST ON VOTE AT THIS TIME,
BUT (C) USG OBJECTION TO ADOPTION OF ENTIRE PER SOV RES IS
OUR EXERCISE OF ALTERNATIVE TO "NO" VOTE AND IN ACCORDANCE
WITH CHAIR'S RULING ON ITEM 4 RES., POSITION MUST BE SO
REFLECTED IN RECORD.

7. COMMENT BY AMB FERGUSON. I AM RELUCTANT TO FORCE ISSUE
OF FORMAL VOTE FOR FOLLOWING REAONS (A) IN VIEW OF ADOPTION
BY CNR OF "GENTLEMEN'S AGREEMENT" OUR REQUEST WOULD LIKELY
BE RULED OUT OF ORDER THUS CREATING UNFORTUNATE PRECEDNET
ON EVEN OF 7TH SPECIAL SESSION, (B) IF CHAIR FULES IN
OUR FAVOR, RULING WOULD CLEARLY BE OVERRIDDEN CREATING EVEN
MORE DAMAGING NEGATIVE PRECEDENT--EJMG. CANADIANS AND THE
NETHERLANDS INFORM US THAT THOUGH THEY ACCEPT USG BASIC
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POSITION ON RIGHT OF MEMBER STATE TO VOTE, THEY BELIEVE
"GENTLEMEN'S AGREEMENT" WOULD RENDER USG REQUEST FOR VOTE
"OUT OF ORDER" (C) I DO NOT WANT TO PUT USG IN POSITION OF
ASSERTING WE ARE NOT BOUND BY ACTIONS OF COMMITTEE TAKEN
WHEN WE NOT MEMBERS WHEN ON VERY RES AT ISSUE, G-77 IS TAK-
ING THE POSITION THEY NOT BOUND BY PRINCIPLES OF INTER-
NATIONAL LAW DEVELOPED WHEN THEY WERE NOT FULL INDEPENDNET
MEMBERS OF INTERNATIONAL COMMUNITY, AND BELIEVE WE HAVE
ACHIEVED FOR FIRST TIME VERY SIGNIFICANT BREAKTHROUGH FOR
OUR PTDITION THAT THERE IS SIGNIFICANT DISTRINCTION BETWEEN
"CONSENSUS" AND FORMS OF ADOPTION WITHOUT VOTE AND DO NOT
WISH TO LOSE BUT RATHER PRESERVE THE SUBSTANCE OF CHAIR'S
RULING SUPRA.

8. JUST AT COMPLETION OF DRAFTING OF FOREGOIN, CNR REACHED

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ACTION ON PERM SOV RES AMB FERGUSON EXCUTED PARA 7 SUPRA.
INDICATING THAT RES WAS "COMPLETELY, TOTALLY AND WHOLLY UN-
ACCEPTABLE TO THE U.S." USG WAS EXERCISING ITS AVAILABLE
OPTION UNDER PARA 10 TO INTERPOSE ITS OBJECTION TO ADOPTION
OF RES AND US ACTION IS EQUIVALENT TO A "NO" VOTE NOT MERELY
A RESERVATION. THE US POSITION WAS COMPLETELY REPEAT COM-
PLETELY SUPPORTED BY FOLLOWING DELS: FRG, CANADA, JAPAN,
ITALY, SWEDEN, NORWAY, FRANCE, AUSTRIA, UK, NETHERLANDS
AND AUSTRALIA.

9. CHAIR RULED HE "DISCERNED NO CONSENSUS FOR RESOLUTION"
BUT HE DID DISCERN "A MAJORITY FOR ADOPTION AND ALL DIS-
AGREEMENTS AND OBJECTIONS TO ADOPTION WOULD BE APPROPRIATELY
REFLECTED IN RECORD IN ACCORD WITH PARA 10."
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UNQUOTE INGERSOLL

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